

REMARKS

In response to the Office Action mailed June 18, 2010, Applicants request reconsideration and withdrawal of the rejection based on the foregoing. Claims 4-6, 14-18 and 29, as previously presented, remain in the application for the review and consideration by the Examiner. Claim 29 is amended and the amendment is amended to include a clarification that existed in other previously pending claims. For at least those reasons and the reasons discussed below, the claims are in condition for allowance.

A significant point of disagreement in the prosecution of this application has been that the construction given to the "component" claims. To further prosecution, certain amendments were previously made that limited the pending claims to "system" claims. Although, Applicant disagrees with the examiner in this respect Applicant decided, at least for the present moment, to avoid this issue by prosecuting the "system" claims. The patentability of the "system" claims are discussed below.

REJECTION UNDER 35 U.S.C. § 102(e)

Claims 14-16 and 29 were rejected as being anticipated by US Patent No. 6,272,359 to Kivelä et al. ("Kivelä" hereinafter). Applicants respectfully traverse the rejection. All the features of claim 29 are not described or suggested by Kivelä as for example explained in the following.

Kivelä discloses a mobile communication device constructed for use in communicating with a wireless communications network. To permit bi-directional communication among the units, multiple access protocols are used, either TDMA or CDMA.

For Kivelä to anticipate the claims, it must recite every feature present in the claims. However, Kivelä fails to recite every feature present in the claims. In claim 29, Kivelä fails to disclose that the wireless devices are pieces of jewelry, such as earrings. Instead, Kivelä discloses at most common earphones. There is no teaching within Kivelä that jewelry pieces, such as earrings, are to be used as a wireless device.

The Office Action also recites disclosures of infrared and GSM/CDMA as a teaching of wireless communication. However, Kivelä fails to teach GSM/CDMA communication amongst devices. Although Kivelä discloses GSM/CDMA cellular phones, Kivelä is silent about the communication protocol used within the network between the wrist part

and the phone. What is disclosed by Kivela is that to enable multiple connections of devices, Code Division Multiple Access (CDMA) and Time Division Multiple Access (TDMA) *algorithms* are used. Although Kivela teaches that these *algorithms* are commonly used in cellular phone networks, Kivela is silent about what communication *protocol* is used with these algorithms in the network with the wrist part and the cellular phone. Thus GSM and CDMA protocol communications between cellular telephones in Kivela cannot anticipate the communication protocol used in the current application between jewelry network components.

In addition, the IMEI, as asserted by the Examiner, cannot be the device identification, and thus the current claimed invention is not disclosed or suggested by Kivela. The IMEI is a password that the phone loads into the other devices. It is not a password for the phone and without the phone or central unit, the password is useless and the other devices would not references or use the IMEI. The IMEI also does not distinguish one device from another. There is also no disclosure of the IMEI being a part of the network protocol. The examiner identifies CDMA and TDMA algorithms, but there is no disclosure of the device identification being a part of the algorithms (which are not even a communications protocol).

The Kivela also fails to disclose network identification information such a feature. In an attempt to remedy this, the Office Action states that “[this] is an inherent feature of CDMA systems...” However, as explained above, Kivela fails to teach what communications *protocol* is used in the network between the wrist part and cellular phone. Thus this argument is moot unless Kivela specifically teaches the use of CDMA (as used by cellular networks), which it fails to specify or even suggest. The Examiner is also kindly reminded of MPEP 2112 (IV), wherein regards to *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990), it states that the court ruled "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." (emphasis in original). Thus, the Examiner must provide the applicant with the basis for the inherency of this feature in CDMA networks, or for the use of a cellular CDMA network as the communications protocol between the cellular phone and wrist part. Therefore, Kivela cannot anticipate this feature.

Furthermore, Kivela fails to teach the features of:

“wherein each component is configured to adapt to an addition or removal of any modular personal network component of the MPN from the MPN to continue to provide the functions of the remaining plurality of jewelry individual network components; and whereby each component in the modular personal network of a user performs one or more actions in response to another component in the modular personal network being removed from the network wherein that action adapts the one or more remaining component to operate with other and continue to generate an output.”

Kivela is silent with respect to any interaction that occurs when components are disconnected. Advantageously, the current claimed invention reacts when a component is disconnected. When a component is disconnected in the current claimed invention, the remaining components in the network react to allow the remaining components to communicate with one another still. In Kivela, if the wrist part is removed, the network would be disconnected, as all communication amongst the devices must go through the wrist part. The removal of one, central, device will disable the network and there is no disclosure of an affirmative action in response to a removal of a device. Silence is not sufficient to provide an anticipation of an element.

Therefore, it is respectfully requested that the rejection for claim 29 be withdrawn, as Kivela fails to teach every feature of the claim.

Claims 14-16 are also patentable at least because, as explained above, claim 29 is patentable over Kivela.

REJECTIONS UNDER 35 U.S.C. § 103(a)

Claims 4-5 were rejected as being unpatentable over Kivela in view of US Patent No. 6,594,370 to Anderson (“Anderson” hereinafter). Claims 4-5 are also patentable at least because, as explained above, claim 29 is patentable over Kivela.

In view of the above remarks, the Applicants respectfully request withdrawal of the 35 U.S.C. 102 and 103 rejections. The application is now believed to be in condition for allowance, early notice of which would be appreciated. Should the Examiner not agree or have any questions, then a personal or telephonic interview is respectfully requested to discuss any remaining issues in an effort to expedite the allowance of this application.

Respectfully submitted,

12/27/10

Date



Pejman Sharifi (Reg. No. 45,097)

WINSTON & STRAWN LLP
Customer No. 28765
(212) 294-2603